THE POLITICAL RIGHTS OF ENGLISH JEWS.

WHEN considering the acquisition of political rights by the Jews, credit is often given to our legislators for never having enacted laws with the express object of depriving Jews of all share of political power. The gratitude for this mercy need not be excessive, for, without any special legislation, the Jews were effectually excluded from such power under the law as it existed at the time of their return, nor were the governing classes at all hasty in removing disabilities which, if not intentionally imposed, were at least deliberately maintained. The disabilities in question were occasioned by the necessity for those engaged in public affairs to take certain oaths, known as the oaths of allegiance, supremacy, and abjuration, of which it becomes necessary to give a more particular account.

Until the period of the Reformation the oath of allegiance appears to have been bound up with the rendering of homage and fealty, but when the Church of England repudiated all connexion with the Roman Pontiff and acknowledged the king as its supreme head, it was thought necessary to frame a new oath of allegiance, embodying also an oath of supremacy or recognition that the king to whom allegiance was sworn possessed sovereign power, and was himself subject to no foreign potentate, ecclesiastical or lay. It will be unnecessary to do more than mention the statutes on this subject passed in the reign of Henry VIII, namely, 25 Hen. VIII, c. 22; 26 Hen. VIII, c. 2; 28 Hen. VIII, c. 7; id., c. 10; and 35 Hen. VIII, c. 1, because these were repealed during the short Papist revival under Queen Mary. More attention must be paid to the Act of Supremacy (1 Eliz., c. 1), the ninth section of which creates a new oath in terms as

follows: "I, A. B., doo utterly testifie and declare in my conscience, that the Quenes Highnes is thonelye supreme governour of this realme and of all other her Highnes dominions and countreis, aswell in all sp̃uall or ecclesiasticall thinges or causes as temporall, and that no forreine prince p̃son prelate state or potentate hathe or oughte to have any jurisdicc̃on power superioritie preheminence or aucthoritee ecclesiasticall or sp̃uall within this realme, and therefore I doo utterly renounce and forsake all forraine jurisdicc̃ons power sup̃iorities and aucthorities, and doo promise that from hensforthe I shall beare faith and true allegiance to the Quenes Highnes her heires and lawfull successoures, and to my power shall assist and defende all jurisdicc̃ons preheminences privileges and aucthorities granted or belonging to the Quenes Highnes her heires and successoures or united or annexed to thimperiall crowne of this realme: So helpe me God and by thē contentes of this booke."

The oath was not imposed upon all subjects, but only upon ecclesiastical persons and those who held any temporal office, such as a judge, justice, or mayor, and the penalty for refusal to take the oath was forfeiture of the office, whether ecclesiastical or lay, in respect of which it was imposed. Four years later the obligation to take this oath was extended to all persons in holy orders, holders of a degree in any university, schoolmasters, and persons engaged in practising the law; and the penalty for refusing to take the oath was increased, being made for the first offence the same as under the statutes of praemunire and the second the same as for high treason[1].

After the failure of the Gunpowder Plot in 1605 a new oath was framed for the express purpose of repressing Popish recusants. It is a long and wordy oath, called in the statute creating it the oath of obedience, and is contained in five clauses, embracing in itself oaths of allegiance, supremacy, and abjuration of the Pope's authority. It did

[1] 5 Eliz., c. 1, ss. 5–11.

not abolish or supersede the oath prescribed by the Act of Supremacy, but was concurrent with it, and was often in popular language called the oath of allegiance or abjuration, and in practice, at least after the passing of the Act for administering the oath of allegiance (7 Jac. I, c. 6), would be tendered and administered instead of the earlier and less stringent form, which became known as the oath of supremacy. The tenor of this new oath was as follows:—

"I, A. B., do truly and sincerely acknowledge, profess, testify and declare in my conscience before God and the world, that our sovereign Lord King James is lawful and rightful King of this realm, and of all other his Majesty's dominions and countries; and that the Pope neither of himself nor by any authority of the church or see of Rome, or by any other means with any other, hath any power or authority to depose the King, or to dispose any of his Majesty's kingdoms or dominions, or to authorize any foreign prince to invade or annoy him or his countries, or to discharge any of his subjects of their allegiance and obedience to his Majesty or to give license or leave to any of them to bear arms, raise tumults or to offer any violence or hurt to his Majesty's royal person, state or government, or to any of his Majesty's subjects within his Majesty's dominions.

"(2) Also I do swear from my heart, That notwithstanding any declaration or sentence of excommunication or deprivation made or granted or to be made or granted by the Pope or his successors or by any authority derived or pretended to be derived from him or his see against the said King his heirs or successors or any absolution of the said subjects from their obedience: I will bear faith and true allegiance to his Majesty his heirs and successors, and him and them will defend to the uttermost of my power against all conspiracies and attempts whatsoever which shall be made against his or their persons, their crown and dignity, by reason or colour of any such sentence or declaration or otherwise, and will do my best endeavour to disclose and

make known unto his Majesty, his heirs and successors all treasons and traitorous conspiracies which I shall know or hear of to be against him or any of them.

"(3) And I do further swear That I do from my heart abhor detest and abjure as impious and heretical this damnable doctrine and position That princes which be excommunicated or deprived by the Pope may be deposed or murdered by their subjects or any other whatsoever.

"(4) And I do believe, and in my conscience am resolved That neither the Pope nor any other person whatsoever hath power to absolve me of this oath or any part thereof, which I acknowledge by good and full authority to be lawfully ministred unto me and do renounce all pardons and dispensations to the contrary.

"(5) And all these things I do plainly and sincerely acknowledge and swear according to these express words by me spoken, and according to the plain common sense and understanding of the same words without any equivocation or mental evasion or secret reservation whatsoever: and I do make this recognition and acknowledgment heartily willingly and truly, upon the true faith of a Christian.

"So help me God[1]."

The concluding words of the last paragraph, though undoubtedly obnoxious to Jews, could not have been framed with any intention of imposing a disability upon them, because, as we have seen, there were at that time no Jews known to be settled in the country. The words "upon the true faith of a Christian" were apparently inserted to effectually prevent any equivocation or mental reservation, which when these words were used would in the opinion of the Jesuit doctors themselves involve the penalty of mortal sin[2]. The oath itself was a piece of

[1] 3 Jac. I, c. 4, s. 15.

[2] A small book, either written or corrected by the Jesuit Garnet, called *A Treatise on Equivocation*, was found in the chambers of Francis Tresham, one of the Gunpowder Plot conspirators. This treatise lays it down that a man when called upon, as he thinks unjustly, to make

political sharp practice, and had been cunningly framed to injure the Roman Catholics, among whom there had long been considerable controversy as to the moral right of the Pope to depose a temporal prince. Those Catholics who refused the oath incurred the penalties laid down by the statute, while those who took it were rendered contemptible by asserting to be damnable a doctrine which large numbers of their coreligionists were known to approve [1].

At the time of the Revolution in 1688 the old forms of the oaths commonly called the oath of supremacy and the oath of allegiance were repealed, and the oaths were recast so as to read as follows:—

"I, A. B., do sincerely promise and swear, That I will be faithful and bear true allegiance, to their Majesties King William and Queen Mary. So help me God," &c. (the oath of allegiance).

"I, A. B., do swear That I do from my heart abhor, detest and abjure as impious and heretical that damnable doctrine and position, That princes excommunicated or deprived by the Pope, or any authority of the see of Rome may be deposed or murdered by their subjects or any other whatsoever.

"And I do declare That no foreign prince person prelate state or potentate hath or ought to have any jurisdiction power superiority preeminence or authority ecclesiastical or spiritual within this realm. So help me God," &c. (the oath of supremacy) [2].

Such were the forms of the oaths of supremacy and

a declaration or take an oath may lawfully equivocate by using ambiguous words or by reserving mentally a sense of the words used different from that actually expressed, and that even though he uses the words "without equivocation or mental reservation." But there is one exception, namely, that he cannot do this without being guilty of mortal sin if he brings his true faith towards God into doubt or dispute. (See Baron Alderson's judgment in Miller *v.* Solomons (1852), 8 St. Tr. N.S., p. 163.)

[1] Dodd's *Church History*, Part V, Art. IV.

[2] 1 Will. & Mary, c. 8, s. 12. See ibid., c. 1, ss. 6 and 7.

allegiance, nor was any change made in them, so far as our present subject is concerned[1], until the middle of the late Queen Victoria's reign, when the question of the right of Jews to sit in Parliament, which will be dealt with in greater detail later, was raised and decided. It may therefore be seen that after the accession of William and Mary the most devout Jew could conscientiously take either or both of these oaths. However, after the death of James II in 1701 and the recognition of his son, the old Pretender, as king, not only by the Jacobite party in the United Kingdom, but also by the French monarch, Louis XIV, it was thought necessary to frame a third and new oath abjuring the Pretender's title, and known as the oath of abjuration, and impose it upon various classes of persons, including all who held any public office or high position in the state. The form of this oath was closely modelled upon the old oath of obedience which had been framed in 1605 with the express purpose of penalizing the Papists for their supposed complicity in the Gunpowder Plot, and the fifth and last clause of the old oath, ending with the words "upon the true faith of a Christian," was taken bodily and incorporated into the new oath of abjuration. Changes necessitated by the death of an old sovereign and the accession of a new one were from time to time introduced into the oath of abjuration, but on the death of the old Pretender in 1765 it assumed its final form which was retained until 1858, when by the Oaths Act of that year[2] a single oath was substituted for the three oaths of allegiance, supremacy, and abjuration. To make the record complete it will be well to give the words of the oath of abjuration in the same way as the oaths of supremacy and allegiance have already been set out; they are as follows:—

"I, A. B., do truly and sincerely acknowledge, profess, testify and declare in my conscience before God and the

[1] The change made by the Catholic Emancipation Act of 1829 (10 Geo. IV, c. 7, s. 2) applied only to persons professing the Roman Catholic religion.

[2] 21 & 22 Vict., c. 48.

world That our sovereign lord, King George, is lawful and rightful King of this realm and all other his Majesty's dominions and countries thereunto belonging. And I do solemnly and sincerely declare That I do believe in my conscience That not any of the descendants of the person who pretended to be prince of Wales during the life of the late King James the Second and since his decease pretended to be and took upon himself the stile and title of King of England by the name of James the Third or of Scotland by the name of James the Eighth or the stile and title of King of Great Britain hath any right or title whatsoever to the crown of this realm or any other the dominions thereunto belonging: and I do renounce refuse and abjure any allegiance or obedience to any of them. And I do swear That I will bear faith and true allegiance to His Majesty King George and him will defend to the utmost of my power against all traitorous conspiracies and attempts whatsoever which shall be made against his person crown or dignity. And I will do my utmost endeavour to disclose and make known to his Majesty and his successors all treasons and traitorous conspiracies which I shall know to be against him or any of them. And I do faithfully promise to the utmost of my power to support maintain and defend the succession of the crown against the descendants of the said James and against all other persons whatsoever which succession, by an act intituled, 'An act for the further limitation of the crown and better securing the rights and liberties of the subject,' is and stands limited to the Princess Sophia electoress and dutchess dowager of Hanover and the heirs of her body being protestants. And all these things I do plainly and sincerely acknowledge and swear according to these express words by me spoken and according to the plain common sense and understanding of the same words without any equivocation mental evasion or secret reservation whatsoever. And I do make this recognition acknowledgment abjuration renunciation and promise

heartily willingly and truly upon the true faith of a Christian. So help me God[1]."

This new oath could not be taken by a self-respecting Jew, and though, as we have already seen, the legislature allowed Jews to omit the final words, "on the true faith of a Christian," in two particular instances, namely landowners required to take the oath, and persons seeking naturalization in the British colonies in America, this indulgence was never extended to any other cases[2]. It had, on the other hand, been expressly held by the Courts that

[1] 6 Geo. III, c. 53, s. 2. The other statutes are 13 (13 & 14 Ruff.) Will. III, c. 6; 1 Anne, c. 16 (c. 22 Ruff.); 6 Anne, c. 11 (5 Anne, c. 8, Ruff.), art. 22; 6 Anne, c. 41 (c. 7, Ruff.), ss. 20 & 21; and 1 Geo. I, s. 2, c. 13. There is an excellent article on the oath of allegiance in Sir F. Pollock's *Essays in Jurisprudence and Ethics*. The subsequent history of these oaths is as follows: the Oaths Act of 1858 (21 & 22 Vict., c. 48), substituted a single oath for the three oaths of allegiance, supremacy, and abjuration. The new oath contained the substance of the old oaths, and was expressed to be made "upon the true faith of a Christian"; but the very next Act in the Statute Book, the Jewish Relief Act of 1858 (21 & 22 Vict., c. 49), provided that whenever any of her Majesty's subjects professing the Jewish religion shall be required to take the said oath the words "and I make this Declaration upon the true faith of a Christian" shall be omitted. The Office and Oath Act, 1867 (30 & 31 Vict., c. 75, s. 5), still further shortened and simplified the oath to be taken by office-holders. The Promissory Oaths Act of 1868 (31 & 32 Vict., c. 72) established three new forms of oaths, the oath of allegiance, the official and the judicial oath. which are still in force and none of which is objectionable to Jews. They are as follows:—

(1) The oath of allegiance. "I do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her Heirs and Successors according to Law. So help me God."

(2) The official oath. "I do swear that I will well and truly serve Her Majesty Queen Victoria in the office of So help me God."

(3) The judicial oath. "I do swear that I will well and truly serve our Sovereign Lady Queen Victoria in the office of and I will do right to all manner of people after the laws and usages of this realm without fear or favour, affection or ill-will. So help me God."

The Promissory Oaths Act of 1871 (34 & 35 Vict., c. 48) finally repealed all the statutes establishing the old forms of oaths and declarations which had been superseded and rendered obsolete by the Promissory Oaths Act of 1868.

[2] See *J. Q. R.* XVII, 231; *The Return of the Jews to England*, p. 122.

the omission of any part of the oath as framed by the legislature would entail the same penalties as if the oath had never been taken at all[1]. Consequently after the year 1701 no conscientious Jew could hold any of the offices for which the taking of the oath of abjuration was a necessary qualification.

It is to be observed that none of the statutes lay down the mode in which the oath is to be administered; but it would not be illegal for the official tendering the oath to insist upon its being taken on the New Testament, more especially as the earlier statutes (5 Eliz., c. 1, ss. 5 and 7, and 7 Jac. I, c. 6, ss. 12–18) had directed that it should be taken on the Evangelists, and if this were insisted upon the person to be sworn would have no right to compel the official to swear him on the Old Testament[2].

It should further be added that the administration of these promissory oaths—though so dear to the law of England—has no binding effect in law, for the breach of them cannot be prosecuted or punished as perjury[3]. They have been retained only for their moral effect as bringing home to the conscience of the newly appointed official the necessity of faithfully fulfilling the duties of his office.

In dealing with political rights, the principal subjects which will come under review are (1) the right to acquire British nationality; (2) the right of exercising the franchise; (3) the right of being a member of, and holding office under a municipal corporation; (4) the right of holding office under the crown; (5) the right of being a member of and sitting in Parliament.

Most important of all was the right to acquire British nationality. Even at the present time an alien can possess no political rights, but his civil rights also were very limited at the time when the Jews first returned to England. Magna

[1] See Rex *v.* Edward Lord Vaux (1612), 1 Bulstrode, 199.

[2] See Rex *v.* Bosworth (1739), 2 Strange, pp. 1112–14.

[3] Coke, III Inst., c. 74, p. 166.

Charta had no doubt conferred on aliens the privilege of entering, dwelling in, and departing from the realm, but this privilege was to exist only in time of peace, and was strictly confined to merchants engaged in commerce. As has been already seen[1], an alien was incapacitated from holding land or real property of any description with the sole exception that, if a merchant, he might lease a house for the purpose of habitation of himself and family, or the carrying on of his trade, this being an incident of commerce. The ordinary alien, not being a merchant, such as an artificer, could only occupy a house under an agreement, not amounting to a lease, such as a tenancy at will, or from year to year, any greater interest in land he might acquire being liable to forfeiture by the crown. As he could hold no real property he could maintain no real or mixed action, but on the other hand an alien could acquire and hold any personal property, not being an interest in land, with the one exception of a British ship, or any share therein, by gift, trade, or other lawful means, and this property he could alienate during his life, or dispose of by will on his death, for in England the *droit d'aubaine*, prevalent in France, Italy, and other continental countries which vested in the crown the possessions of a dead stranger, never existed. He was liable to pay the alien duty, even although he had obtained letters of denization from the Crown[2]. An alien friend could also

[1] See *J. Q. R.* XVI, 346; *The Return of the Jews to England*, p. 62.

[2] The alien duties under the Lancastrian and Yorkist kings and earlier monarchs had taken the form of a poll-tax levied upon all foreigners resident in the country. Under Henry VI the rates were:—For (1) all merchant strangers, if not denizens—householders, 40*s.*; not householders, but resident six weeks within the realm, 20*s.*; if denizens by letters patent, 10 marks. (2) Others not merchants, householders, 1*s.* 4*d.*; not householders, 6*d.* (see Dowell's *History of Taxation in England*, vol. I, p. 154). After the accession of the Tudors the poll-tax upon aliens does not seem to have remained a permanent feature in our national finance, but in many of the acts imposing taxation upon goods whether exported or imported a double rate was frequently levied upon the goods of aliens, though the additional duty for aliens was not always so great.

maintain any personal action either for the protection of his property or the security of his person or reputation[1]. But although the alien was thus in some ways treated as a natural-born subject his rights might be greatly curtailed by statute, such as the acts against alien artificers[2] and the Navigation Act of 1660, which prohibited aliens from being factors or merchants in any of the extra-European possessions of the Crown, and he had no absolute right either to enter the country or remain in it, if the executive government ordered his departure. This right of a State to exclude or expel a foreigner from its territory is recognized in International Law, and is known under

In the Act granting a subsidy of tonnage and poundage to King Charles II (12 Car. II, c. 4) and the rules annexed to it "all merchant strangers bringing in any sorts of the said wines are to pay thirty shillings in the tonne over and above the aforesaid rates which the native pays," and for lead, tin, and woollen clothes, &c., aliens had to pay double subsidy. At length in 1784 this "petty custom" or additional tax imposed upon aliens' goods was abolished by statute (24 Geo. III, s. 2, c. 16). Since that time aliens have been taxed in the same way as natives, but while the alien duties remained in force they could not be evaded by obtaining letters of denization (see 1 Hen. VII, c. 2; 11 Hen. VII, c. 14; 22 Hen. VIII, c. 8; and 25 Car. II, c. 6). The attempt, for some time successful, of the Jews (many of whom had been made denizens) to escape these duties has been already referred to (*J. Q. R.* XVII, 227; *The Return, &c.*, p. 118). It would seem that in pre-expulsion times the municipalities, which had a right of taxing those resident within their borders, were accustomed to make the Jews pay double the tax imposed on their Christian neighbours. My attention has been called to the following words in an address presented by the Dutch congregation of Sandwich to the mayor of that town in the year 1571 "the order for the head money was not taxed above 2 pence for a christian and but 4 pence for a jewe; which 2 pence we are hertely willing to pay . . . such as amongst our people doe goe for to passe the seas at this tyme do paye not onely 4 pence (which in tymes past was the taxe for a jewe)," &c. (Boys' *History of Sandwich*, p. 743). It has been suggested that this passage shows that a colony of Jews remained in the Cinque Ports after the expulsion in 1290 or else settled there between that date and the return of the Jews in the time of Charles II, but I see no difficulty in making the words "in tymes past" refer to a remote period before the edict of banishment had been issued.

[1] See Tirlot *v.* Morris (1611), 1 Bulst. 134, and Yelverton, 198.

[2] See the statutes 1 Ric. III, c. 9, and 14 & 15 Hen. VIII, c. 2, and 32 Hen. VIII, c. 16; and Henriques on *Aliens and Naturalization*, pp. 20–22.

the name of "droit de renvoi." It was undoubtedly in early times maintained and acted upon in this country; for until comparatively recent times no foreigner was allowed to enter without a passport and under the Registration of Aliens Act, 1836 (6 and 7 Will. IV, c. 11), which, though by no means strictly enforced, was only repealed by the Aliens Act of 1905 (5 Edw. VII, c. 13, s. 10), an alien on his arrival in the United Kingdom had to be registered. There is, however, no instance of the general expulsion of aliens by order of the crown alone since the year 1575, in the reign of Queen Elizabeth. The right has thus been allowed to fall into desuetude, and can no longer be regarded as one of the prerogatives of the Crown; accordingly after the outbreak of the French Revolution, in consequence of the fears occasioned by the large number of refugees and other foreigners arriving in this country, it was found advisable to pass a temporary Act of Parliament empowering the Crown by proclamation or order in Council to order the expulsion of any alien or aliens, who might be within the realm, and also to regulate or prevent the landing of foreigners. The Act known as Lord Grenville's Alien Act, 1793 (33 Geo. III, c. 4), was a temporary one, but was renewed annually during the French war and even after the declaration of peace, though with considerable modifications, until the year 1826, when it was finally abandoned and the system of the registration of aliens adopted in its stead[1].

[1] The first Registration of Aliens Act is 7 Geo. IV, c. 54. In the revolutionary year of 1848 Parliament again vested in the principal Secretaries of State, but only for the space of one year, the power of ordering any alien to depart the realm (11 & 12 Vict., c. 20). The necessity of having legislation upon this subject shows that the Crown has lost the power it once claimed of closing the realm against alien friends and of sending foreigners out of the kingdom. It should be added that even after it was recognized that the right had been lost by desuetude in ordinary cases, it was thought to be still existing in the case of an alien charged with a crime committed abroad and demanded for extradition by his sovereign; see the opinion given to the government in 1792 by Serjeant Hill, quoted in Clarke on *Extradition*, p. 25; but in such cases

Aliens, who were subject to the disabilities above described, comprise all persons born out of the King's dominions or allegiance; for the law of England has always adopted the feudal or territorial principle that all persons born in any of the dominions over which the King has at the time of their birth sovereign power, even although, as in the case of Hanover before 1837, he does not hold them in virtue of the Crown of England, own allegiance to the King, and are consequently natural-born subjects of his realm.

The contrary principle, founded on the Roman law and incorporated in the Code Napoleon and the jurisprudence of many modern nations, whereby children wherever born are always deemed to possess the nationality of their parents, has never in theory been adopted by English law. Nevertheless the class of natural-born subjects has been widened by statute by including in it persons born abroad, whose fathers, and whose grandfathers on the father's side, have been born within the realm[1].

It will thus be seen that the Jews who originally settled here must have all been aliens, and, although their children born here would be natural-born subjects, so great has been the accession to the Jewish community of new comers

the proceedings would have at the present time to be in strict accordance with the Extradition Act, 1870 (33 & 34 Vict., c. 52). (For this subject see Forsyth's *Cases and Opinions on Constitutional Law*, pp. 181 and 369 seq.; Dicey's *Law of the Constitution*, p. 220 (note); and Henriques on *Law of Aliens and Naturalization*, pp. 13, 14.)

[1] See The Foreign Protestants' Naturalization Act, 1708 (7 Anne, c. 5), as explained by the British Nationality Act, 1730 (4 Geo. II, c. 21), and the British Nationality Act, 1772 (13 Geo. III, c. 21). It is by reason of the adoption of the system of the Code Napoleon by Roumania that the Jews of that country have been deprived of their rights of citizenship. A Jew born in that unhappy country may be told: "You are not a Roumanian, for being a Jew, at one time or other your ancestors must have been foreigners; you have their nationality; therefore you are an alien, and require a special act of naturalization before you can become a citizen." And unfortunately the Roumanian government have never been liberal in granting naturalization to Jews, even though settled for generations in the country.

from abroad, that it may be asserted that a very large proportion, if not a majority, of the Jews in England has always consisted of aliens.

The machinery provided by our constitution, by which aliens may acquire some or all of the rights of native born subjects, has in consequence at all times been of the greatest importance to the Jews. In the early days of the resettlement this was in practice confined to obtaining letters patent of denization from the King. The grant of such letters patent under the Great Seal is an ancient prerogative of the Crown, whereby the sovereign is enabled to confer upon the alien many but not all the rights of a native of the realm. The letters patent may be temporary or conditional, and may either specify the privileges granted or confer all the rights of a subject, save and except such as the patent expressly or the law impliedly withholds, for the King cannot alter the law otherwise than by Act of Parliament. A denizen so created "ex donatione regis" is said to be "in a kind of middle state between an alien and a natural-born subject, and partakes of both of them," for his patent can have no retrospective effect, and therefore, before the alteration of the law, until the issue of his letters patent a denizen could have no inheritable blood, and at the present time his children born abroad before his denization do not become British subjects unless they are themselves made denizens by being expressly included in the letters of denization. As has been seen he was liable to pay the alien duties, and to any other restriction upon his rights which might be imposed by Act of Parliament. In particular the Act of Settlement, passed at a time when the jealousy of foreigners, fostered, as it had been, by the dislike of the partiality of William III to his foreign favourites, was rampant in the country, expressly excluded denizens and naturalized persons also from the exercise of all important political functions by providing that "no person born out of the kingdoms of England, Scotland,

or Ireland, or the dominions thereunto belonging (although he be naturalized or made a denizen) except such as are born of English parents, shall be capable to be of the Privy Council or a member of either House of Parliament, or to enjoy any office or place of trust, either civil or military, or to have any grant of lands or hereditaments from the Crown to himself or to any other or others in trust for him[1]."

Though the rights of denizens were thus limited they were highly prized and eagerly sought after by the first Jewish settlers in this country; more especially because the trade with the English colonies and plantations abroad, in those days the easiest avenue to the acquisition of large wealth, had been effectually closed to aliens by the Navigation Act of 1660 (12 Car. II, c. 18), which provided that "no alien or person not born within the allegiance of our sovereign lord the King, his heirs and successors, or *naturalized or made a free denizen*, shall . . . exercise the trade or occupation of a merchant or factor in any of the said places" (i. e. lands, islands, plantations, or territories belonging to the King in Asia, Africa, or America) upon pain of forfeiting all his goods and chattels. For the strict enforcement of this provision a clause was inserted in the Act of 1696 for preventing frauds and regulating abuses in the plantation trade, compelling the governor and commander-in-chief of every English colony or plantation to take a solemn oath to see that this and other provisions were punctually and bona fide observed[2].

[1] 12 & 13 Will. III, c. 2, s. 3.

[2] See 7 & 8 Will. III, c. 22, s. 4. There seems to have been a fear that this Act would have shut out from the colonial trade persons already entitled to take part in it, such as denizens, and to close it to all except persons born within the realm or the plantations. The Jews therefore petitioned against the Bill; see *Commons Journals*, vol. XI, p. 440: "A petition of Isaac Correa, Isaac Pereira and Joseph Henriques, on behalf of themselves and divers other merchants, was presented to the House and read; setting forth That the Petitioners are informed, That there is a clause in the Bill for preventing Frauds and regulating Abuses

The law was not relaxed until 1794, and then only in favour of aliens resident in places acquired by the right of conquest, and was finally repealed in 1825[1].

Very many Jews were made free denizens in the early days of the resettlement, and their admission to this higher status is a mark of the liberality as well as of the far-seeing wisdom of those responsible for the executive government at the time. Mr. Carteret Webb, in an appendix to his well-known pamphlet, "The Question whether a Jew can hold land, &c.," gives a list containing the names of 105 Jews who obtained letters of denization during the reigns of Charles II and James II, and this list is by no means complete[2]. The only condition as a general rule

in the Plantation Trade That no Foreigner shall use the Occupation of a Merchant or Factor, in any of his Majesty's Plantations, under a great Penalty; That such a Clause will be the Ruin of many Families, who by the Rigour of the Spanish and Portuguese Inquisitions were forced to renounce their native Countries and shelter themselves under the Protection of the English Government, to which they have ever dutifully submitted: And praying That they may be heard by their Counsel at the Bar of the House, before the Passing of the said Bill touching the Premises." This was on Feb. 12, 169$\frac{5}{6}$; on March 4 the French Protestants residing in London presented a similar petition. Both petitions were referred to the Committee of the Houses; see *Com. Journ.*, XI, p. 491.

[1] See 34 Geo. III, c. 42, s. 6; 37 Geo. III, c. 63, s. 5; 45 Geo. III, c. 32, s. 5; and 6 Geo. IV, c. 105.

[2] *J. Q. R.* XVII, 205; *The Return, &c.*, pp. 96 and 110. The lists of foreign Protestants and aliens resident in England published by the Camden Society in 1862 contain at p. 42 the following document: "Denization to severall persons [among them are some Jews of note]. Our will and pleasure is that you prepare a Bill for our Royall Signature to passe our Great Seale for the makinge the persons hereafter named, being Aliens borne, free Denizens of this our Kingdome, viz.": then follow the names of a great number of persons including a number of Jews, seven of whom are included in Webb's list, but others not found in that list are Isaac Abraham, James Baruch Lonzada, Philipp Martines, Jone Mathias, Judith his wife, and Isaac their son, Judith and Frances Meres, and Samuel Sasportas. The document continues: "And that they have and enjoy all priviledges and immunityes as other free Denizens do, provided they and every of them do live and continue with their familyes in this our Kingdome of England or elsewhere within

attached to the grant of a patent of denization to a Jew was the taking of the oath of allegiance, in the form of which, as we have seen, there was nothing to which he could reasonably object [1].

Though the King by his letters patent could not grant the full rights of a natural born subject to an alien, these could be obtained from Parliament, which, in intendment of law, is assumed to be omnipotent. An alien born in Portugal, who came into England with Beatrice, Countess of Arundel, was naturalized by Parliament in the third year of Henry VI, but private Acts of Parliament by which naturalization was conferred upon an alien did not come into vogue until the reign of Queen Elizabeth [2]. Naturalization differed from denization in that it had a retrospective effect; the naturalized person being deemed

oure dominions, and this sayd Denization to be forthwith passed under our great seale, without any Fees or other charges whatsoever to be payd by the sayd persons in the passing thereof. And for so doing this shall be your warrant. Given at our Court at Whitehall the 16 of December 1687. To our Attorney or Sollicitor Generall."

[1] Though the King and his chief ministers were thus liberal in creating denizens, impediments to the carrying out the royal intentions were sometimes interposed by minor officials. Thus we find among the public records for the year 1677 a "Petition of Manuel Martinez Dormido of London Merchant and Daniel Bueno Henriques of Barbadoes, Hebrews, to the King. That His Majesty by warrant under his Sign Manual granted Petitioners letters of denization which have passed the Signet, but are denied the Privy Seal, Petitioners' religion being only objected, pray that said two bills may pass the Privy and Great Seals notwithstanding said objection, several of their nation having enjoyed lately the like privileges" (*Col. Papers*, vol. XLI, No. 146; *Cal. S. P. America and West Indies*, 1677–80, p. 201).

Both grants had been made on the same day, namely July 24, 1661, some sixteen years before. See *Cal. S. P. Dom.*, 1661–2, p. 214, and ibid., p. 42. Also ibid., America and West Indies, 1685–8, p. 633, nos. 2019 and 2020, and ibid., Colonial, 1661–8, p. 49, no. 139. Dormido, who was made a denizen with his two sons Solomon and Aaron, is another name altogether omitted in Webb's list. He had come to England in 1654; see *J. Q. R.* XIV, 692; *The Return of the Jews*, p. 40.

[2] Viner's *Abridgment*, Tit. Alien (D) Naturalization, and Henriques on *Aliens and Naturalization*, pp. 38, 39.

a subject *natura*, to all intents and purposes, as if he had been born so. So that his lands might be inherited by his son, though born before the special Act of Parliament was passed. And he was moreover free from any liability to pay the alien duties and the other restrictions to which, as we have seen, an alien made a denizen was liable. The clause in the Act of Settlement already recited however applied to him, so that his political rights were after 1714 greatly limited[1].

It was in early times determined that these wide rights, in those days including full political rights, should be conferred on none save those who professed the true Protestant religion; to secure which a public Act of Parliament was passed in the year 1609. It recites that "Forasmuch as the naturalizing of strangers, and restoring to blood persons attainted, have been ever reputed matters of mere grace and favour, which are not fit to be bestowed upon any others than such as are of the religion now established in this realm," and then enacts that no person "of what quality condition or place soever" shall be naturalized unless he have received the sacrament of the Lord's Supper within one month next before any bill exhibited for that purpose, and shall also take the oath of supremacy and the oath of allegiance in the Parliament house before his bill be twice read[2]. Thus a conscientious Jew, being unwilling to take the sacrament, could not obtain naturalization by means of a private Act of Parliament.

In addition various Acts of Parliament, all of which are now repealed, were passed during the seventeenth and eighteenth centuries, conferring naturalization and the full

[1] This clause of the Act of Settlement did not come into force until the accession of George I in 1714. In that year 1 Geo. I, st. 2, c. 4, was passed to prevent it being dispensed with in the private act of Parliament granting naturalization. This last Act was repealed in 1844 by Mr. Hutt's Naturalization Act (7 & 8 Vict., c. 66), but clause 3 of the Act of Settlement is still unrepealed. See Henriques on *Aliens and Naturalization*, p. 40.

[2] 7 Jac. I, c. 2.

rights and privileges of British subjects (with the exception in the case of Acts passed after 1714 of the political rights reserved by the Act of Settlement) upon foreigners in return for benefits supposed to accrue to this country by reason of their carrying on certain branches of trade here or in the colonies, or being engaged in the public service for a definite period. For example, by the Act for encouraging the manufactures of making linen cloth and tapestry, passed in 1663 (15 Car. II, c. 15), all foreigners that shall really and bona fide set up and use in England any of the manufactures mentioned for the space of three years, should upon taking the oaths of allegiance and supremacy enjoy all the privileges of a natural born subject. This Act was not repealed till 1863, but though open to the Jews, for the oaths required did not include the oath of abjuration, does not appear to have been frequently taken advantage of by them. The Acts for the better supply of mariners and seamen gave similar privileges to foreigners who had served for two years or more upon a British ship of war or merchant or other trading ship during time of war, and no oath or other formality was required as a condition precedent to the acquisition of these rights, which were however subject to the disabling clause in the Act of Settlement already mentioned [1]. Of the provisions of these Acts also Jews could, but did not in any large numbers, avail themselves. On the other hand, the privilege of becoming British subjects, given in 1761 to foreigners who had for two years served as officers or soldiers in his Majesty's royal American regiment or as engineers in America, was strictly confined to Protestants, and those claiming it were bound to first qualify themselves by taking and subscribing the oaths, including the oath of abjuration, and also receiving the sacrament in some Protestant and reformed congregation [2]. The benefit

[1] See 6 Anne, c. 64 (37 Ruffhead), s. 20; 13 Geo. II, c. 3; and 20 Geo. III, c. 20.

[2] See the statute 2 Geo. III, c. 25.

of naturalization given to foreigners engaged in the whale fishery was similarly restricted to Protestants, who might qualify themselves in the ways above stated [1].

A more liberal and enlightened policy animated the framers of the Acts for the encouragement of settlement in the American colonies. By the statute (13 Geo. II, c. 7) entitled an Act for naturalizing such foreign Protestants and others therein mentioned, as are settled or shall settle in any of his Majesty's colonies in America, and popularly known as the Plantation Act, foreigners who had resided in any of the American colonies for seven years or more might be naturalized upon taking the oaths of allegiance, supremacy, and abjuration, and also receiving the sacrament. But special provisions were made in favour of Quakers and Jews. Both were exempted from receiving the sacrament; the former were allowed to affirm instead of taking the oaths, and the latter to omit the obnoxious words, "on the true faith of a Christian," which formed the conclusion of the oath of Abjuration. Moreover, although the persons thus naturalized had their political rights limited by the Act of Settlement, yet in their case the incapacity to hold any office or place of trust or have any grant of lands from the Crown, applied only to offices or grants in Great Britain and Ireland, and not

[1] By 22 Geo. II, c 45, s. 8 seq., foreign Protestants serving for three years on board English ships employed in the whale fishery and qualifying themselves by taking the oaths and the sacrament were to be deemed natural born subjects, and by 26 Geo. III, c. 50, s. 24, aliens employed in the *southern* whale fishery for five years, and by the amending Act, 28 Geo. III, c. 20, ss. 15 and 16, the foreign owners of ships so employed for a like period may be naturalized. It is to be observed that the benefit of these Acts relating to the southern whale fishery was not confined to Protestants, and the only condition precedent was the taking of the oath of allegiance; neither the sacrament nor the other oaths being necessary. But the Acts were not long in force, for they were repealed in 1795 by 35 Geo. III, c. 92. See s. 36 seq., which restrict the privilege of naturalization to forty families owning whalers and settling at Milford before Jan. 1, 1798.

to the colonies or elsewhere[1]. The Jews who had great interests in the American colonies, and more particularly in the West Indian Islands, freely availed themselves of the benefit of this Act, as can be seen from the lists of names of persons thus naturalized, which, in accordance with the provisions of the Act, the Secretary of each colony was bound annually to transmit to the office of the Commissioners for Trade and Plantations for the purpose of registration[2].

Thirteen years later was introduced the famous Jew Bill, the merit of which is ascribed both to the Lord Chancellor, Lord Hardwicke, and the Prime Minister, Mr. Pelham, by their respective biographers. No measure has perhaps been more thoroughly misrepresented. It was entitled "an Act to permit persons professing the Jewish religion to be naturalized by Parliament, and for other purposes therein mentioned." It recited first the Naturalization Act of 1609, under which no alien was to obtain a private Act of Parliament for his naturalization unless he had first received the sacrament of the Lord's Supper, and secondly the Plantation Act of 1740, under which Jews could be naturalized in the American colonies without the necessity of first receiving the sacrament, and then enacted that Jews might, in spite of the provisions of the Act of 1609, be naturalized by private Act of Parliament without receiving the sacrament. It further provided that the political rights excepted by the Act of Settlement should be excluded, and that no person should obtain such a private Act of Parliament who had not resided in Great

[1] See 13 Geo. II, c. 7, s. 6; 20 Geo. II, c. 44, s. 5; and 13 Geo. III, c. 25.

[2] For the names of persons naturalized in His Majesty's plantations in America, 1740–61, see the *Colonial Office Records* (*Board of Trade*), *Plantations General*, vols. 59 and 66, and *Jews in the British West Indies*, by Dr. Friedenwald, Pub. American Jewish Hist. Soc., No. 5. In the debate in the House of Commons on Dec. 4, 1753, it was stated that 185 Jews had been naturalized during the thirteen years in which the Act had then been in operation, and of these no fewer than 130 resided in the island of Jamaica (See Lord Orford's *Memoires*, vol. I, p. 317).

Britain or Ireland for three years without being absent for more than three months at any one time, or who should not bring proof that he had professed the Jewish religion for the past three years. It further contained a clause disabling every person professing the Jewish religion from purchasing, inheriting, or otherwise acquiring any advowson or right of patronage or presentation or other interest whatsoever in any benefice or ecclesiastical living. The Bill passed through the House of Lords without a division, and without any serious opposition. When the Bill came down to the Commons, it was soon perceived that political capital might be made out of it by an unscrupulous opposition. The Parliament was then nearly six years old, and there was bound to be a general election in the course of the following year. It was therefore determined to make a party cry against the government in office out of the introduction of a piece of legislation which, though a measure of justice, must have been felt even by its authors to be lacking the element of popularity. A sharp debate arose on the second reading; it was urged by the opposition that Christianity itself was dishonoured, that the Established Church was menaced, that the country would be inundated by Jews, and that all landed property, public offices, and political power would be monopolized by them. It was, on the other hand, pointed out that Jews had been living in England under the protection of the law for nearly a century, that they could already be naturalized in the colonies under the Plantation Act, that at most only a limited number would be able to avail themselves of the present enactment; and that Parliament could refuse to pass any particular Naturalization Bill which might be presented to it; but the Bill would encourage persons of wealth and substance to come to the country and so increase its commerce and credit. The second reading was carried by ninety-five votes to sixteen. The agitation in the country was, however, spreading, petitions were presented to Parliament against the Bill,

including one from the Mayor, Aldermen, and citizens of London. A division was again challenged when the Bill was read a third time upon a motion for adjournment, and this was only thrown out by ninety-six votes to fifty-five. The Bill accordingly received the Royal Assent and became law as the Jewish Naturalization Act, 1753 (26 Geo. II, c. 26).

The contest was not over. During the summer recess it was transferred from the Parliament House to the country. The flames of prejudice and intolerance which had been sedulously fanned during the debate in the House of Commons now burst forth with the utmost fury. Pamphlets and broadsides were issued by both parties. Sober and temperate arguments were put forward on the one side, every calumny and insult at any time levelled against the Jewish race was raked up on the other. In such an arena the issue could not be long doubtful. Reason had to yield to passion, and the cry "No Jews! No Jews! No Wooden Shoes," was heard throughout the length and breadth of the land. The Bishop of Norwich for having supported the Bill in the Lords was openly insulted in several parts of his diocese when holding the annual confirmations, and members of the lower House who represented other than pocket boroughs were threatened with the loss of their seats. The Government in view of the impending general election decided to give way before the storm. On November 15, 1753, the very first day of the new session, the Duke of Newcastle, brother to the Prime Minister, and himself a Secretary of State, introduced a Bill in the House of Lords to repeal the unpopular measure, retaining, nevertheless, the clause by which Jews were disabled from purchasing or inheriting an advowson or right of patronage in the church. It was, however, objected by the enemies of the Jews that the retention of this clause in the statute book would give parliamentary sanction to the doctrine, by no means at that time universally accepted, that Jews born here are by the common law entitled to all the rights

of natural-born subjects, including the right to hold real property. The clause was in consequence omitted, and the Act of the preceding session totally repealed[1].

In the Commons also no time was lost in attacking the obnoxious Act. As soon as the Address was agreed to, a motion was made and carried without opposition that the House should be called over on December 4 in order to take the Act into consideration. In the meanwhile the repealing Bill came down from the House of Lords. Both political parties being agreed upon the expediency of repeal, the debate turned upon the preamble by which Ministers thought to defend themselves from the charge of pusillanimously yielding to popular clamour. It read, "Whereas occasion has been taken from the said Act to raise discontents and to disquiet the minds of many of his Majesty's subjects"; the Ministerial contention being that the Act in reality was of no importance in the sphere of religion, and gave only a small indulgence to the Jews by relieving them from one only of the formalities the law required for naturalization as a British subject, but that it had been unjustifiably misrepresented far and wide as being of far-reaching effect upon the constitution as a whole, and the established church in particular, and that the uproar thus occasioned was such that to retain it on the statute book would do the cause of the Jews more harm than good. At the same time in revoking it there ought to be an expression of disapprobation at the course pursued by those who had misled the public. On the other hand it was maintained by the opponents of the Bill that the popular tumult was fully justified by so iniquitous a measure, and an amendment was moved to substitute for the words quoted, "Whereas great discontents and disquietudes had from the said Act arisen in the minds of many of his Majesty's subjects." The original preamble

[1] In consequence a Jew may at the present time have the right to present a clergyman to a benefice in the Church of England. See the preceding article.

was ultimately adopted by 113 votes to 47, and the repealing Bill passed into law.

Notwithstanding, a few days afterwards, on December 4, the day appointed for the call of the House, Lord Henley moved for leave to bring in a Bill to repeal so much of the Plantation Act of 1740 as enabled Jews to obtain naturalization in the colonies, but the party in power feeling that they had already paid sufficient attention to mere clamour, and that it would be dangerous to still further gratify the spirit of intolerance and fanaticism that was abroad, strongly opposed the reopening of the subject, and the motion was thrown out by 208 to 88.

Such is the story of the famous Jew Bill, creditable neither to the intelligence of the mob nor the courage of the Ministry; of it let us say with Blackstone, "Peace be now to its manes[1]."

Seventy-two years afterwards Parliament passed the statute 6 Geo. IV, c. 67, which was not confined to Jews, but abolished in all cases the necessity of receiving the sacrament imposed by the Naturalization Act of James I on all applicants to Parliament for Naturalization Bills[2]. Moreover, in 1844 Mr. Hutt's Naturalization Act (7 and 8 Vict., c. 66) introduced the system of acquiring British nationality by means of a certificate from a Secretary of State. This system is as convenient and available for Jews as for other aliens. It was improved and extended by the Naturalization Act, 1870 (33 and 34 Vict., c. 14), which with the amending Acts, is still in force, and except in very exceptional cases the old systems of denization

[1] The repealing Act is 27 Geo. II, c. 1. For the whole controversy see Cobbett's *Parl. Hist.*, vol. 14, pp. 1365–1431; 15, pp. 91–163; Lord Orford's *Memoires*, vol. I, pp. 310–19; Coxe's *Administration of Henry Pelham*, vol. II, pp. 245–53, 290–8; Campbell's *Lives of the Chancellors*, vol. V, pp. 123–4; and Lord Mahon's *History of England*, vol. IV, pp. 35–7.

[2] Jews could, however, obtain naturalization in Ireland after 1816 by virtue of the Irish statute 36 Geo. III, c. 48, passed in that year. See Evans' *Collection of Statutes*, vol. I, p. 4, and Gabbett's *Digest of Statute Law*, vol. I, pp. 307–9.

and naturalization by private Acts of Parliament are now obsolete[1].

Having once acquired the rights of a British subject, either by birth or naturalization, the Jew, provided he was a freeholder in a county or a freeman in a borough, or otherwise duly qualified, was at common law entitled to exercise the franchise at parliamentary and other elections. The legislature, however, provided machinery for preventing Roman Catholic voters from exercising this right. The statute 7 and 8 Will. III, c. 27 enacted that no person should be admitted to vote in any Parliamentary election who should refuse to take the oaths of allegiance and supremacy which the sheriff or other officer taking the poll was empowered and required to administer at the request of any of the candidates. This provision would not affect Jewish voters who, as has been seen, would find nothing objectionable in either of these oaths. However, a few years later, in the Act making provision for the election of sixteen peers of Scotland, in accordance with the terms of the then recently passed Act of Union between England and Scotland, a clause was inserted disabling from voting at any Parliamentary election in Great Britain any person who refused to take in addition the oath of abjuration which the presiding officer was likewise required to administer at the request of any candidate. The oath of abjuration ended with the words, "on the true faith of a Christian," and thus Jews as well as Roman Catholics might be, and were on occasion, debarred from recording their votes[2]. This provision was not repealed until the Statute Law Revision Act of 1867 (30 and 31 Vict., c. 59), but the Roman Catholic Relief Act, 1829 (10 Geo. IV, c. 7, s. 5) allowed Roman Catholic electors to substitute an oath they were willing to take. Needless to say, in the case of Jews and other conscientious

[1] For the present law see the author's treatise on the *Law of Aliens and Naturalization*.

[2] See 6 Anne, c. 78 (Ruff. 23), s. 13.

objectors, it had been allowed to become obsolete long before 1867, or it would have been swept away when their disabilities were being removed.

So complete a change has been effected in the attitude of the legislature towards this question, that in the Ballot Act of 1872 special provision is made to enable voters "of the Jewish persuasion" who object on religious grounds to mark the ballot paper on the Jewish Sabbath to have, "if the poll be taken on Saturday," their votes recorded by the presiding officer in the same way as votes given by persons incapacitated by blindness or other physical cause[1]. It should, however, be noted that the clause is badly drawn, for it ought to, but does not, include cases when the poll is taken on the Jewish Day of Atonement, or the first and last days of the great Jewish festivals on which observant Jews equally object on religious grounds to take part in the present system of voting by ballot[2].

The rights of holding office in a municipal corporation, and that of holding an office or place of trust under the crown, can up to a certain point be dealt with together. The Corporation Act of 1661 (13 Car. II, s. 2, c. 1) enacted that no person should be elected or chosen in or to any office or place in any corporation unless he had within

[1] See 35 & 36 Vict., c. 33, 1st schedule, rule 26.

[2] It is sometimes stated that Jews had greater rights than Papists as regards voting in a parish vestry. This statement is made on the authority of a note in the case of Edenborough *v.* the Archbishop of Canterbury, which was before Lord Chancellor Eldon in 1826. The note is: "His Lordship's opinion was *understood to be*; that Jews were entitled to vote in the election of a vicar, but that Roman Catholics were not so entitled: and at the next election, votes were admitted and rejected upon that principle" (2 Russ., p. 111). It is to be observed, however, that this is not a decision, but merely what the reporter understood to be the opinion of the Chancellor, and, if pronounced, it is difficult to see upon what ground it was based other than the custom which had prevailed in the parish in question, namely, St. Stephen's, Coleman Street, in the city of London. If such a custom existed, it does not appear to rest on any legal principle.

one year next before his election taken the sacrament of the Lord's Supper according to the rights of the Church of England, and the election of any person not so qualified, was declared void. The holders of such offices were likewise required to take the oaths of allegiance and supremacy. The rigour of the law was, however, to some extent modified in 1718 by the Act for quieting and establishing corporations (5 Geo. I, c. 6), by the terms of which no person, though not properly qualified under the Corporation Act, should be removed from office or incur any penalty unless proceedings were taken against him within six months after his election to the office, and were then prosecuted without wilful delay. The Test Act of 1673 (25 Car. II, c. 2) proceeded upon similar but not identical lines. By it all persons holding any office or place of trust under the crown, whether civil or military, were required within three months after their admission to office, to receive the sacrament of the Lord's Supper according to the usage of the Church of England in some public church after divine service on Sunday. They were further required to take the oaths of allegiance and supremacy, and also to make and subscribe a declaration against transubstantiation. Non-compliance with the Act involved a penalty of £500, as well as forfeiture of the office and a number of civil disabilities. The oaths and declaration were obnoxious to Roman Catholics only, but the obligation to take the sacrament effectually excluded from office all Dissenters and Nonconformists without exception.

Historically no doubt the motive of these two legislative enactments was different. The Corporation Act was aimed at the extreme Protestant Dissenters, the more moderate at that time being willing to take the sacrament; it was passed immediately after the Restoration of Charles II, and was intended to purge the municipalities which had become the strongholds of the Puritan and Republican party of what was then regarded as their most dangerous element. The Test Act on the other hand was aimed at

the Roman Catholics, and was entitled "an Act for preventing dangers which may happen from Popish Recusants." It was passed shortly after the Duke of York, the Heir presumptive to the throne, had publicly declared his adhesion to the Roman Catholic creed and was a consequence of the popular excitement aroused by the prospect of a papist becoming king, and thereby supreme head of the Church. By insisting on the taking of the sacrament, it included in its penalties Protestant Nonconformists, who since the Act of Uniformity had become still further estranged from the Established Church. Thus as a result all dissenters were placed under political disabilities.

In both cases some relief was given to Dissenters by the Indemnity Acts which were passed annually after the accession of George II, the working of which has been already referred to in the preceding article[1], but the law itself was not altered until the year 1828. In the meanwhile many advocates of reform had attempted to procure the repeal or amendment of the Corporation and Test Acts. At length, in the year mentioned, Lord John Russell succeeded in passing through both Houses of Parliament a measure effecting that purpose. The Act (9 Geo. IV, c. 17) in substance substituted for the taking of the sacrament a solemn Declaration "to refrain from using any power conferred by an office to the injury or detriment of the Protestant Church as by law established, or so as to disturb the Church or its Bishops and clergy in the possession of any rights or privileges to which they were by law entitled."

Lord John Russell's motion had originally been for the repeal of so much of the Corporation Act and the Test Act (the Annual Indemnity Act being afterwards included) as required as a qualification for certain offices and employments the taking of the sacrament of the Lord's Supper according to the rites of the Church of England, or imposed

[1] For the precise operation of the Indemnity Acts see The King *v.* Parry (1811), 14 East 549, and in the matter of Steavenson (1823), 2 B. & C. 34.

any penalty for omission so to do, and was intended to give relief to all except Roman Catholics, who being unwilling to sign the declaration against transubstantiation would still be disabled by the Test Act. But it was intended to give them relief by a separate measure, which was in fact brought in and carried the following year, and in their case, it was argued, the disability had been originally imposed, not upon religious opinions, but upon political doctrines. Mr. Secretary Peel, who represented the Tory government in the House of Commons, did not at first support the Bill, which on account of the Annual Indemnity Act he regarded as unnecessary. In his view the Dissenters had no real grievance, for the Annual Indemnity Act enabled them to hold the offices from which they were excluded in principle, but not in fact. Nor did the Dissenters as a body look upon the existence of the excluding Act in the statute-book as an insult to themselves. But after the subject had been debated at length, and it was shown that owing to the technicalities of the Indemnity Act Dissenters might suffer more than a purely sentimental wrong, the Home Secretary gave his support to the measure, but insisted on the necessity of inserting a clause to give protection to the Established Church; which up to that time had been protected by the right which either House of Parliament possessed of refusing its sanction to the Annual Indemnity Act, if at any time the Church was thought to be in danger. The new protection proposed to be given was to take the form of a Declaration to be made and signed by all persons elected or admitted to the offices and employments now thrown open. The Declaration as framed by Mr. Peel was taken from a bill for Catholic emancipation, formerly brought forward by Mr. Grattan, and read as follows: "I, A. B., do solemnly declare, that I will never exert any power nor any influence which I may possess by virtue of my office, to injure or subvert the Protestant Church by law established in these realms, or to disturb it in the pos-

session of those rights and privileges to which it is by law entitled." The Declaration was in reality no real protection to the Church because it did nothing to prevent the passage of an Act of Parliament disestablishing the Church, and if such an Act was passed those who subscribed the Declaration would be immediately free from any obligation it imposed. At the same time the Declaration was in this, its original form, harmless, and was acquiesced in by Lord John Russell, and became a part of the Bill as sent up to the House of Lords.

In the Upper House the Declaration was not considered sufficiently stringent. The Duke of Wellington proposed the insertion of the words, "Sincerely in the presence of Almighty God," and the Bishop of Llandaff, that the words "on the true faith of a Christian" should be added at its commencement, and these amendments were carried without a division. The effect of this last addition upon Jews was fully recognized in the House, for Lord Holland, who had entered a protest against it, at a later stage, moved as an amendment that Jews should be permitted to omit the words, "on the true faith of a Christian"; but this was negatived "pro forma."

When the Bill was sent back to the Lower House, the Lords' amendments were all accepted, and so became law, but some discussion took place upon the amendments, and after the Bill had been read a third time, Mr. Brougham made a spirited protest against the changes effected by the Peers, explaining that he had not expressed his disapprobation before for fear of endangering a measure which in spite of its imperfections was still a step in the advancement of toleration and religious liberty[1].

Let us now consider what was the real effect of the new statute upon the status of the Jews. The Declaration as finally settled read as follows: "I, A. B., do solemnly and

[1] See Hansard, *Parl. Deb.*, 2nd series, vol. 18, pp. 676 seq., 816-33, 1180-1208, 1329 seq., 1450-1520, 1571-1610; vol. 19, pp. 39-49, 109-37, 156-86, and 289-300.

sincerely in the presence of God profess, testify, and declare, upon the true faith of a Christian, That I will never exercise any power, authority, or influence which I may possess by virtue of the office of to injure or weaken the Protestant Church as it is by law established in England, or to disturb the said Church or the Bishops and Clergy of the said Church in the possession of any rights or privileges to which such Church or the said Bishops and Clergy are or may be by law entitled."

This Declaration was required to be made by every person elected to any municipal office "*within one calendar month next before or upon his admission*" to any such office. It had also to be subscribed by every person admitted into any office, employment or place of trust under the Crown, but in such case it might be done "*within six calendar months after* his admission to such Office, Employment or Place of Trust." Moreover, naval and military officers below the rank of Rear-Admiral and Major-General, and persons engaged in the Customs, Revenue, or Post Office, were expressly exempted from the necessity of making the Declaration. Omission to make the Declaration rendered the election or appointment of all persons required to make it wholly void. It is obvious that a conscientious Jew would not subscribe the Declaration; indeed the status of the Jews was rendered more unfavourable by the new Act. When in future the Annual Indemnity Act was passed[1], words were added extending the time for making the Declaration in the same way as the time for taking the sacrament had been previously extended. But though the Indemnity Act might assist a Jew to hold an office under the Crown, it in no way enabled him to be elected to any post in a municipal corporation, because in that case the Declaration had to be subscribed at latest upon admission to the office[2].

[1] These Acts were still annually passed until the Promissory Oaths Act of 1868 (31 & 32 Vict., c. 72) rendered them unnecessary. The last Indemnity Act is 30 & 31 Vict., c. 88.

[2] See Blunt's *History of the Jews*, p. 113 (note).

In the following year the Roman Catholic Relief Act, 1829 (10 Geo. IV, c. 7), removed most of the political disabilities imposed upon Roman Catholics, to abolish which Lord John Russell's measure had done nothing. Quakers, Moravians, and Separatists also objected to the new Declaration, made, as it was expressed to be, in the presence of God and on the true faith of a Christian; for these expressions made the Declaration seem to partake of the nature of an oath. For their benefit the Acts for the relief of Quakers, Moravians, and Separatists elected to municipal offices (1 & 2 Vict., c. 5, and ibid., c. 15) were passed in 1837. These Acts substituted in the case of persons holding these beliefs a new Declaration which omitted the obnoxious phrases; but it was not for some time that a similar measure of relief was granted to the Jews.

In 1835 a Jew, Mr. David Salomons, was elected Sheriff of London, which is not only a city or municipality but also a county of itself. As sheriff of a city or corporation it would have been necessary for him to make the Declaration imposed by the new Act (9 Geo. IV, c. 17) before or upon admission to the office, but a sheriff of a county holding no municipal office, and therefore able to avail himself of the provisions of the Indemnity Act, was in practise under no such obligation. The new Sheriff as a Jew was unwilling to make the Declaration, and to solve the difficulty an Act of Parliament (5 & 6 Will. IV, c. 28) entitled "An Act for removing doubts as to the Declaration to be made and oaths to be taken by persons appointed to the office of Sheriff of any City or Town being a County of itself," was passed. The Act declared that no one elected to the office of sheriff of any city or town being a county of itself should by reason thereof be liable to make or subscribe the Declaration. Parliament was thus willing to remove the hardship of the particular case which had actually arisen, but was not yet prepared to grant a general measure of relief to Jews desirous of filling offices in corporations. Lord Campbell, who, as Attorney General, had been responsible

for the Act, declared in the House of Lords ten years afterwards that he had desired to introduce a more comprehensive measure, but that he felt certain that if he had extended the Bill a single line further it would have been rejected[1].

This small concession was wholly inadequate to satisfy the legitimate aspirations of the Jews in general, or of Mr. Salomons in particular; for it was the latter's fortune to play the foremost part in fighting the battle of religious equality, both for himself and his co-religionists. In December, 1835, being already Sheriff, Mr. Salomons was elected Alderman for the ward of Aldgate, in the City of London, and presented himself to the Court of Aldermen for admission to the office. It was demanded of him whether he had signed the Declaration required by the Act of 1829 within the space of one month, to which he answered that he had not. Whereupon it was demanded whether he would then make and subscribe the said Declaration; to which he declined to say whether he would or not, but required the Court to admit him as Alderman. This the Court refused to do, and declared his election null and void. A precept for a new election was issued, and another candidate elected to fill the vacancy. Against this newly-elected Alderman proceedings in the nature of "Quo warranto" were taken. These proceedings were successful in the Court of King's Bench, the court of first instance for such matters, which held that the Aldermen were wrong in refusing to admit Mr. Salomons to the office to which he had been elected.

[1] Hansard's *Parl. Deb.*, 3rd series, vol. 78, p. 526; and Campbell's *Lives of the Chancellors*, VIII, p. 155. Lord Campbell's reluctance was justified by the state of feeling in the House. Indeed two years later when the Bill for relief of Quakers, Moravians, and Separatists, elected to municipal offices was sent into committee, Mr. Grote moved that it be an instruction to the committee to extend the relief to persons of all religious denominations, express mention being made of the Jews, the motion was rejected by 172 to 156 votes (Hansard, *Parl. Deb.*, 3rd series, vol. 39, pp. 508–20.)

A writ of error was, however, brought and the judgment of the Court of King's Bench was set aside by the Court of Exchequer Chamber. The Court held that the words "upon admission" did not mean "after," but "upon the occasion of" or "at the time of admission," and accordingly that Mr. Salomons who had neither made the Declaration nor expressed his willingness to make it was not entitled to be admitted, and that the election of his successor was regular and legal[1].

Mr. Salomons was not yet beaten; in 1844 he was again elected Alderman, this time for Portsoken Ward, and in the following year, mainly in consequence of his exertions, Lord Chancellor Lyndhurst introduced, and carried without opposition in the House of Lords, the Jewish Disabilities Removal Act of 1845. In the House of Commons its conduct was entrusted to Sir Robert Peel, and though not allowed to pass unopposed, it was carried by a substantial majority[2]. The Act permitted every person of the Jewish religion upon admission to any municipal office to substitute for the former the following new Declaration: "I, A. B., being a person professing the Jewish Religion, having conscientious scruples against subscribing the Declaration contained in an Act passed in the ninth year of the reign of King George the Fourth, intituled an Act for repealing so much of several Acts as imposes the necessity of receiving the Sacrament of the Lord's Supper as a qualification for certain offices and employments, do solemnly, sincerely, and truly declare, That I will not exercise any power or authority or influence which I may possess by virtue of

[1] See the Queen *v.* Humphery (1838), 3 N. & P. 681 and (1839), 10 A. & E. 335.

[2] 8 & 9 Vict., c. 52. See Hansard, *Parl. Deb.*, 3rd series, vol. 78, pp. 515 seq., and vol. 82, pp. 622 seq. A similar measure had been proposed by Mr. Divett (also at the instigation of Mr. Salomons in 1841) and, though it passed the House of Commons, it had been thrown out by the Lords by 98 to 64 on the third reading, having been read a second time by a majority of 1. See Hansard, *Parl. Deb.*, 3rd series, vol. 56, p. 504; ibid., vol. 57, p. 84; and ibid., vol. 58, pp. 1048 and 1449.

the office of to injure or weaken the Protestant Church as it is by law established in England, nor to disturb the said Church or the Bishops and Clergy of the said Church in the possession of any rights or privileges to which such Church or the said Bishops and Clergy may be by law entitled."

Mr. Salomons was again elected an Alderman in the year 1847, and had the satisfaction of being admitted upon making the new Declaration.

The Oaths Act of 1858 (21 & 22 Vict., c. 48) extended the benefit of the Jewish Disabilities Removal Act of 1845, granted to persons professing the Jewish religion, to all other cases in which the Declaration imposed by the Act of George IV was required to be taken, and the Jewish Relief Act of the same year (21 & 22 Vict., c. 49) enabled Jews to omit the words "upon the true faith of a Christian" when taking the newly-framed Oath of Allegiance, Supremacy, and Abjuration; so that all offices under the Crown other than those expressly excepted, as well as municipal offices, were thenceforth thrown open to the Jews. The Act also contained a proviso that any right of presentation to an ecclesiastical benefice which might be attached to any office held by a person professing the Jewish religion should be exercised by the Archbishop of Canterbury for the time being.

Finally, in the year 1866, the obligation to make these Declarations which had by the various statutes been imposed upon all who had been elected to any office in a corporation or appointed to any place of trust or office under the Crown, was removed by the Qualification for Offices Abolition Act of that year[1], and the statutes themselves having thus been rendered nugatory were formally repealed by the Promissory Oaths Act of 1871[2]. In consequence at the present time the only obligation incumbent

[1] 29 & 30 Vict., c. 22; see also the Office and Oath Act, 1867 (30 & 31 Vict., c. 75, s. 5).

[2] 34 & 35 Vict., c. 48.

upon persons about to enter upon any of these offices is the taking of the simplified form of the Oath of Allegiance, which has already been set out above, and the official oath, or if the office be a judicial one, the judicial oath as prescribed by the Promissory Oaths Act of 1868[1]. Neither of these oaths contains anything objectionable to Jews; the terms of the official oath are, "I do swear that I will well and truly serve His Majesty, King Edward, in the office of . So help me God." And the form of the judicial oath is, "I do swear that I will well and truly serve our Sovereign Lord, King Edward, in the office of , and I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will. So help me God."

Moreover, persons permitted by law to make a solemn affirmation or declaration instead of taking the oath may do so by substituting the words "solemnly, sincerely, and truly declare and affirm" for the word "swear," and omitting the words, "So help me God."

Thus since the year 1845 a Jew has been able to be elected a member of a municipal corporation, and since 1858 to hold an office or place of trust under the Crown. But there still existed a minor disability as regards municipal officers, which was not removed for another quarter of a century. The Act which repealed the Occasional Conformity Act—a measure passed during the ascendancy of the High Church party in the latter part of Queen Anne's reign with the avowed purpose of excluding Protestant Dissenters from municipal and other offices—and the Schism Act of 1713—a still more recent and intolerant piece of legislation—in return for the relief thus afforded, created a new disability, which without giving any protection to the Established Church was calculated to foster feelings of irritation and grievance in the hearts of those against whom it was aimed. The Act

[1] 31 & 32 Vict., c. 72.

contained a clause providing that if any mayor, bailiff, or other magistrate should knowingly or wilfully resort to or be present at any public meeting for religious worship, other than of the Church of England as by law established, in the gown or other peculiar habit, or attended with the insignia of his office, he should on conviction be disabled from holding any such office, and adjudged incapable of bearing any public office or employment whatsoever[1]. This enactment was directed against all Nonconformists, whether Protestants, Roman Catholics, or Jews; and such store was placed upon its efficacy that when the disabilities of Roman Catholics were finally removed in 1829, instead of being repealed it was actually re-enacted and extended, for whereas the Act of George the First applied only to England and Wales, the prohibition was extended to all parts of the United Kingdom, and a penalty of £100 was now imposed for every breach of the prohibition in addition to the forfeiture of office as provided by the earlier Act[2]. It was not till 1867 that the Office and Oath Act of that year repealed these futile and offensive enactments[3].

An ingenious device, which for some years was resorted to for the purpose of persecuting Protestant Dissenters in the City of London, was never employed against the Jews on account of their exclusion from the freedom of the City, to which reference has been made in the preceding article. By the Corporation Act of 1661 none could fill a corporate office who had not within one year next before

[1] 5 Geo. I, c. 4; the Occasional Conformity Act is 10 Anne, c. 6 (Ruff., c. 2), and the Schism Act 13 Anne, c. 7 (12 Anne, st. 2, c. 7, Ruff.).

[2] See s. 25 of the Roman Catholic Relief Act, 1829 (10 Geo. IV, c. 7).

[3] 30 & 31 Vict., c. 75, s. 4; see also 34 & 35 Vict., c. 116. The reason for their original institution is given by Sir Wm. Blackstone in a note to p. 53 of his *Commentaries*, vol. IV, as follows: "Sir Humphry Edwin, a lord mayor of London, had the imprudence soon after the Toleration Act to go to a Presbyterian meeting-house in his formalities; which is alluded to by Dean Swift in his *Tale of a Tub* under the allegory of Jack getting on a great horse and eating custard."

his election taken the sacrament of the Lord's Supper according to the rites of the Church of England. In the year 1748 the Corporation of London made a by-law imposing a fine of £400 upon every person who being nominated by the Lord Mayor for the office of Sheriff declined to be a candidate, and of £600 upon every one who being elected by the Common Hall refused to serve the office. The fines were to be used for defraying the cost of the new Mansion House. Many Dissenters were nominated and elected to the office of Sheriff, although disabled from filling it by the Corporation Act, and in all cases the fines were enacted, more than £15,000 being obtained in this way. At length a nonconformist named Allen Evans determined to test the legality of these proceedings. In the year 1754, as many of his co-religionists had been before, he was elected Sheriff. Not having taken the sacrament within twelve months he was ineligible to serve the office, and he refused to pay the fine; whereupon an action was brought against him by the City Chamberlain in the Sheriff's Court, and he was in April, 1657, adjudged to pay the sum of £600, the amount of the fine, in addition to a sum of £174 10*s.* 7*d.* for damages and costs. Mr. Evans then appealed to the Court of Hustings, but the appeal was dismissed and the original judgment affirmed, Mr. Evans being condemned to pay a further sum of £95 3*s.* 0*d.* as the costs of the appeal. Mr. Evans then brought the case before the court of the commissioners delegates, called the Court of St. Martin's, which on this occasion consisted of five judges of the superior courts; the case was argued before them no less than three times, and at length, in 1762, they unanimously reversed the decision of the lower courts. The City Corporation then brought a writ of error in the House of Lords, which also decided in favour of Mr. Evans, upon the ground that the Toleration Act enabled persons who came within its terms to abstain from taking part in the rites of the Church of England without committing any breach of law, and consequently

the plea of ineligibility for office on account of not having taken the sacrament was a good and lawful plea in answer to a claim for a penalty for refusing to serve. If the by-law was to have the effect, which the City contended it had, then it was a worse instrument of persecution than the Jesuits had ever used; for the law made Dissenters ineligible for office, and the by-law punished them for not serving. As Lord Mansfield said in his speech in moving the judgment in the House of Lords: "If it could be supposed the city have a power of making such a by-law, it would entirely subvert the Toleration Act, the design of which was to exempt the Dissenters from all penalties; for by such a by-law they have it in their power to make every Dissenter pay a fine of £600, or any sum they please, for it amounts to that. The professed design of making this by-law was to get fit and able persons to serve the office: and the plaintiff sets forth in his declaration that if the Dissenters are excluded, they shall want fit and able persons to serve the office. But were I to deliver my own suspicion, it would be, that they did not so much wish for their services, as for their fines. Dissenters have been appointed to this office, one who was blind, another who was bedridden; not, I suppose, on account of their being fit and able to serve the office. No; they were disabled both by nature and by law ..... In the cause before your lordships the defendant was by law incapable at the time of his pretended election: and it is my firm persuasion that he was chosen because he was incapable ..... They chose him that he might fall under the penalty of their by-law[1]."

[1] Sir Thomas Harrison (Chamberlain of London) *v.* Evans, 1767, 3 Bro. P. C., p. 465; *Lords' Journals*, vol. 31, pp. 457, 458–9, 461, 470, 475; Cobbett, *Parl. Hist.*, vol. 16, pp. 313–27; and 2 Burn., *Eccl. Law*, pp. 207–20. Similar by-laws had been made and acted upon to the prejudice of Dissenters in other parts of the country. Indeed as early as 1690, in the case of the Mayor of Guildford *v.* Clarke, the court decided that the defendant being a Protestant Dissenter was not liable to pay a fine of £20 imposed by a local by-law for refusing to serve the ancient office of bailiff

As has been already indicated the Jews were exempt from this particular form of persecution, not on account of any goodwill felt towards them by their Christian neighbours, but because at that time it was impossible to nominate or elect Jews to the offices in question, because the freedom of the city, and consequently the burdens as well as the privileges which it entailed, was strictly denied them. The result of one measure of intolerance was thus the means of sheltering its victims from the consequences of other intolerant enactments.

It has already been stated that in the Jewish Relief Act of 1858, which threw open to Jews the right of holding office under the Crown by enabling them to omit the final words of the qualifying oath, certain high offices, including those of Lord Chancellor and Lord Lieutenant of Ireland, were expressly excepted. The exception was based upon a similar reservation as regards Roman Catholics contained in the twelfth section of the Catholic Relief Act of 1829 (10 Geo. IV, c. 7), and is in the following words: "Nothing herein contained shall extend or be construed to extend to enable any person or persons professing the Jewish religion to hold or exercise the office of Guardians and Justices of the United Kingdom or of Regent of the United Kingdom under whatever name, style or title such office may be constituted, or of Lord High Chancellor, Lord Keeper or Lord Commissioner of the Great Seal of Great Britain or Ireland or the office of Lord Lieutenant or Deputy or other chief governor or governors of Ireland or Her Majesty's High Commissioner to the General Assembly of the Church of Scotland[1]." But after the Office and Oath Act, 1867 (30 & 31 Vict., c. 75) had opened the Chancellorship of Ireland

in that town (2 Vent. 247), but the effect of this decision was thought to have been annulled four years later by the case of the King and Queen *v.* Larwood in which the defendant, though he pleaded the Corporation Act and that he was a Protestant Dissenter, was fined (though only five marks) for refusing to serve the office of Sheriff of Norwich to which he had been elected (1 Ld. Raymond 29 and 4 Mod. 269).

[1] 21 & 22 Vict., c. 49, s. 3.

to every subject of the Queen, this section, together with the two preceding ones, was wholly and unreservedly repealed by the Promissory Oaths Act of 1871 (34 & 35 Vict., c. 48, s. 1), so that since that date every office, the throne alone excepted, could legally be filled by a Jew, although the appointment of a Jew might be highly impolitic or improper, as, for instance, to the post of High Commissioner to the General Assembly of the Church of Scotland.

There is, however, a widespread belief that a Jew cannot legally hold the offices of Lord Lieutenant of Ireland and Lord Chancellor. This was, no doubt, the case until the year 1871, but since that time it has ceased to be so, and the view, though still very generally accepted, rests upon no sure foundation. It is argued that Roman Catholics cannot hold these offices; therefore Jews, to whom the legislature has shown no greater favour than to Roman Catholics, cannot hold them either. But section 12 of the Catholic Relief Act, 1829, has never been expressly repealed, and still remains on the statute-book, and yet nevertheless there is high authority for saying that Roman Catholics are at the present time eligible for these offices, for the statutes imposing the qualifying oaths and declarations which Roman Catholics were unable to take and by virtue of which they were formerly excluded have been abrogated without any reservation, and there is no disability directly imposed upon Roman Catholics by any Act of Parliament, nor should such disability be implied by words in Acts of Parliament which, while excepting certain offices from the relief granted, in other cases do not expressly create a new disability[1]. This at any rate is the effect of the answer given by the late Lord Coleridge, when questioned as Attorney-General in the House of Com-

[1] The sections in question are 10 Geo. IV, c. 7, s. 12, and 30 & 31 Vict., c. 62; the later Promissory Oaths Act of 1871 (34 & 35 Vict., c. 48, absolutely abolished the statutes imposing the obnoxious oaths and therefore by implication removed the disability which had been kept alive by the former Acts.

mons in 1872[1]. As to the status of Roman Catholics in this matter, there does seem to be some doubt, owing to the sections concerning them being unrepealed, but in the case of Jews there is hardly any room for doubt, and both Mr. Gladstone and Mr. Asquith in the course of the debate on the former's bill to remove the disabilities of Roman Catholics to hold the offices of Lord Chancellor of Great Britain and Lord Lieutenant of Ireland, in 1891, asserted without contradiction or correction that there was no obstacle to the holding of the Lord Chancellorship by any one other than a Roman Catholic, though he was a Jew, Mahomedan, Buddhist, or Hindoo[2]. This Bill was not accorded a second reading, so that the doubt in case of Roman Catholics has not been removed; but as to Jews it may be stated that it is the accepted view of constitutional lawyers that since 1871 they labour under no such disability[3].

It should be added that the last section of the Jewish Relief Act of 1858 is still in force, and consequently that a Jew holding office under the Crown is disabled from exercising any ecclesiastical patronage which would other-

[1] Hansard, *Parl. Deb.*, 3rd series, vol. 211, pp. 280 seq. When Lord Chief Justice he reaffirmed this view in his well-known charge to the jury in the case of the Queen *v.* Ramsay and Foote, saying: "But now, so far as I know the law, a Jew might be Lord Chancellor" (1883). 15 Cox C. C. p. 235.

[2] Hansard, *Parl. Deb.*, 3rd series, vol. 349, pp. 101, 1733-99; the passages referred to are at pp. 1749 and 1777.

[3] It would indeed be difficult to see on what foundation such a disability could now be based. Not on statute, for the section of the statute has been repealed, nor on common law on the ground that the Chancellor is the keeper of the King's conscience, and that as the King must by the Bill of Rights be a Protestant and by the Act of Settlement join in communion with the Church of England, the Lord Chancellor as keeper of his conscience must likewise be a Protestant and a member of the National Church, for if this reasoning were sound not only would Protestant Dissenters be under a similar disability, but it would have been wholly unnecessary to expressly except this particular office in the Acts for the relief of Roman Catholics and Jews, if such persons were already incapacitated by the common law.

wise devolve upon him. The words of the section are as follows:—

"Where any right of presentation to any ecclesiastical benefice shall belong to any office in the gift or appointment of Her Majesty, and such office shall be held by a person professing the Jewish religion, the right of presentation shall devolve upon and be exercised by the Archbishop of Canterbury for the time being; and it shall not be lawful for any person professing the Jewish religion, directly or indirectly, to advise Her Majesty, or any person or persons holding or exercising the office of Guardians of the United Kingdom, or of Regent of the United Kingdom, under whatever name, style or title such office may be constituted, or the Lord Lieutenant of Ireland, touching or concerning the appointment to or disposal of any office or preferment in the Church of England or in the Church of Scotland; and if such person shall offend in the premises, he shall, being thereof convicted by due course of law, be deemed guilty of a high misdemeanour, and disabled for ever from holding any office, civil or military, under the Crown[1]."

The same disability is imposed upon Roman Catholics by the seventeenth and eighteenth sections of the Catholic Relief Act, 1829, but all other Dissenters (even though atheists or heathens) are entitled to exercise the ecclesiastical patronage belonging to any office which they may hold.

H. S. Q. Henriques.

[1] 21 & 22 Vict., c. 49, s. 4.

(To be concluded.)